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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/510,037 | 03/17/2005 | Erich Fuderer | 566/42763 | 4656 |
| 23646 | 7590 | 03/26/2007 | EXAMINER | |
| BARNES & THORNBURG LLP | | | SCHWARTZ, CHRISTOPHER P | |
| 750-17TH STREET NW | | | ART UNIT | PAPER NUMBER |
| SUITE 900 | | | 3683 | |
| WASHINGTON, DC 20006-4675 | | | | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 03/26/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | |
|------------------------------|--|-------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/510,037 | FUDERER ET AL. |
| | Examiner Christopher P. Schwartz | Art Unit 3683 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 November 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

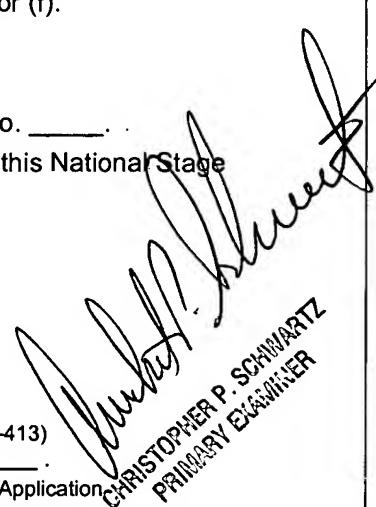
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER



DETAILED ACTION

1. Applicant's response filed 11/21/06 has been received and considered. No amendment to the claims has been made to define them over the prior art of record.
- The claims remain unduly broad in scope and, consequently in their current form, will not be allowed by the examiner.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20,2,3,13,18,19 are rejected under 35 U.S.C. 102(b) as being anticipated by Blosch.

Regarding claim 20, as now amended and as broadly claimed, Blosch discloses a brake application system for vehicles comprising a wear adjuster 48,50 having a helical gear (see the abstract) and a spindle 56 and a nut 60 as "screw connection parts".

One screw connection part (nut 60) being driven for the wear adjusting and another screw connection part (spindle 56) capable of being driven for emergence or auxiliary release of the brake, as broadly claimed. See col. 6 lines 3-6.

Regarding claim 2-3,13,18,19 as can be seen from the drawings these requirements are met.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2,3,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfsteiner et al. (the PCT publication is relied upon with a date of 3/29/2001) in view of Blosch et al.

Regarding claim 20 Wolfsteiner et al. shows a brake device with which applicants are familiar. Note the motor at 24 and motor brake 26 and the nut/spindle unit at 58.

Lacking in Wolfsteiner et al. is the helical connection parts, although as broadly claimed Wolfsteiner et al. may be interpreted to include all of these features. See the discussion in Wolfsteiner et al. column 4 lines 46-66.

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Blosch et al. clearly show "second connection parts". See Blosch et al. the abstract and the readjusting motor at 50.

One having ordinary skill in the art at the time of the invention would have found it obvious to have provided Wolfsteiner et al. with a "second connection part", as broadly claimed, simply as a backup to the first one (for redundancy -- as is known in the art) or for the reasons discussed by Blosch, such as a separate wear adjusting motor (and accompanying screw/nut assembly) to adjust the wear of the brakes, or (as explained above) for redundancy should the service motor fail (see col. 5 lines 14-24 of Blosch).

Regarding claims 2,3 these types of gear arrangements are notoriously well known in the art. See the art cited by the examiner. Consequently it would have been obvious to have substituted one well known type of gear/spindle/nut and clutching arrangement for another simply dependent upon such well known obvious engineering design considerations as weight, space, and energy considerations and effectiveness of braking action according to application specifics.

7. Claims 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfsteiner et al. in view of Blosch et al. as applied to claim 20 above, and further in view of either Takahashi et al. or Nadas et al.

Regarding claims 4-17 Takahashi et al. (see figure clutch arrangement at 136) and Nadas et al. arrangement at 24 clearly teach known alternative gear and clutch arrangements for linear type brake actuators. Either of these could be substituted for the nut and spindle arrangement of Wolfsteiner et al. simply as an obvious alternative equivalent arrangement of known mechanical parts.

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8. Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfsteiner in view of Blosch et al. as applied to claim 18 above, and further in view of EP 0699846 or Akamatsu et al.

The reference to EP '846 (as discussed in applicants specification) is relied upon simply to show a known nut and spindle arrangement similar to that of Wolfsteiner et al. This wear adjusting arrangement could be used in Wolfsteiner et al.

Akamatsu et al. Also shows a free wheel spring clutch arrangement at 16 or 30,31. Note the two motors at 11 and 19 (which controls the function of the spring). Such a motor/gear/wear adjuster arrangement could be substituted for the same arrangement in a device as Wolfsteiner et al.

Response to Arguments

9. Applicant's arguments filed 11/21/06 have been fully considered but they are not persuasive. Applicant's are again reminded of the undue breadth of their claims. Unduly broad limitations such as "one screw connection part" and "another screw connection part" have consequently been given their broadest reasonable interpretation. Applicant's should gain some clarity on the breadth of limitations like "part" by consulting a dictionary, such as Webster's Ninth New Collegiate dictionary.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Schwartz whose telephone number is 571-272-7123. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim McClellan can be reached on 571-272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cps
1/30/07